

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री संजय अरोड़ा, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI SANJAY ARORA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1372, 1373 & 1374/Mds/2015

निर्धारण वर्ष / Assessment Year : 1995-96 & 1996-97

Smt. G. Malliga,  
No.13, 6<sup>th</sup> Cross Street,  
Lake Area, Nungambakkam,  
Chennai - 600 034.

v. The Deputy Commissioner of  
Income Tax,  
Central Circle II(1),  
Chennai - 600 034.

PAN : AFFPM 4644 A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. N. Devanathan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri N. Madhavan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 12.10.2017

घोषणा की तारीख/Date of Pronouncement : 09.11.2017

### **आदेश /O R D E R**

#### **PER BENCH:**

These appeals filed by the assessee are directed against the respective order of the Commissioner of Income Tax (Appeals), Puducherry, for the assessment years 1995-96 and 1996-97. Since common issue arise for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. Let us first take the assessee's appeals in I.T.A. No.1372 & 1374/Mds/2015.

3. Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that for assessment years 1995-96 and 1996-97, the Assessing Officer levied penalty under Section 271(1)(b) of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, the CIT(Appeals) without considering the provisions of law, restricted the penalty to ₹5000/-. Referring to Section 271(1)(b) of the Act, the Ld.counsel submitted that penalty can be levied provided the assessee failed to comply with the notice issued under Section 142(1) or 143(2) of the Act. Referring to the penalty order, the Ld.counsel submitted that the authorized representative of the assessee Shri R. Gopalakrishnan appeared before the Assessing Officer and also filed written submission. Therefore, according to the Ld. counsel, at the best, it can be considered as delay in complying with the direction of the Assessing Officer and it is not a case of failure to comply with the notice issued under Section 142(1) or 143(2) of the Act. Therefore, according to the Ld. counsel, the CIT(Appeals) ought to have deleted the entire penalty levied by the Assessing Officer.

4. On the contrary, Shri N. Madhavan, the Ld. Departmental Representative, submitted that though the assessee filed the written submission through her authorized representative Shri Gopalakrishnan, the reason for delay in furnishing details was not furnished. Therefore, according to the Ld. D.R., the Assessing Officer has rightly levied penalty under Section 271(1)(b) of the Act.

5. We have considered the rival submissions on either side and perused the relevant material available on record. We have also carefully gone through the provisions of Section 271(1)(b) of the Act. In case the assessee fails to comply with the notice issued by the Assessing Officer under Section 142(1) or 143(2) of the Act, the Assessing Officer can levy penalty. In this case, as rightly pointed out by the Ld.counsel, it is not a case of failure of the assessee in complying with the notice issued by the Assessing Officer, but a case of delay in furnishing the details. Failure to comply with notice is one thing and delay in furnishing the details is another thing. Since there was no failure on the part of the assessee to comply with the notice issued by the Assessing Officer under Section 142(1) or 143(2) of the Act, this Tribunal is of the considered opinion that penalty cannot be levied under Section 271(1)(b) of the Act.

Therefore, as rightly submitted by the Ld.counsel for the assessee, the CIT(Appeals) ought to have deleted the penalty in toto.

6. From the penalty order it appears that the delay arose because of pendency of criminal proceeding and police investigation. In those circumstances, levy of penalty under Section 271(1)(b) of the Act is not justified. Accordingly, orders of both the authorities below are set aside and the penalty of ₹5000/- levied by the Assessing Officer for both the assessment years is deleted.

7. Now coming to I.T.A. No.1373/Mds/2015, the assessee has challenged the correctness of penalty levied by the Assessing Officer under Section 271(1)(c) of the Act.

8. Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the Assessing Officer levied penalty of ₹3000/- on the ground that the agricultural income shown to the extent of ₹15,000/- was not substantiated. According to the Ld. counsel, the assessee is owning agricultural land and earning the agricultural income regularly is not in dispute. In fact, this is the lease amount received from various farmers on leasing out the agricultural land. Therefore, according to the Ld. counsel, there cannot be any penalty under

Section 271(1)(c) of the Act. In fact, according to the Ld. counsel, the assessee has not furnished any inaccurate particulars or concealed any part of income, therefore, the CIT(Appeals) is not justified in confirming the penalty levied by the Assessing Officer.

9. On the contrary, Shri N. Madhavan, the Ld. Departmental Representative, submitted that the assessee could not substantiate the claim of agricultural income, therefore, the Assessing Officer assessed ₹15,000/- as income from other sources. Hence, according to the Ld. D.R., the Assessing Officer levied penalty which was rightly confirmed by the CIT(Appeals).

10. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee disclosed ₹15,000/- towards agricultural income and claimed before the Assessing Officer that this is the lease amount received on letting out the land to various farmers. The Assessing Officer found that the assessee could not furnish any details. The fact remains that the assessee disclosed ₹15,000/- and claimed the same as agricultural income. Merely because the assessee could not substantiate that the income was from agriculture, it cannot be said that there was concealment of income. Moreover, it cannot also be

said that the assessee has furnished inaccurate particulars of income. The matter would stand differently in case the assessee fails to disclose the income. The assessee disclosed ₹15,000/- and claimed exemption on the ground this is from agriculture. Making a claim before the Assessing Officer cannot be construed to be furnishing of inaccurate particulars or concealing any part of income in view of the judgment of Apex Court in CIT v. Reliance Petroproducts Pvt. Ltd. (322 ITR 158). Therefore, we are unable to uphold the orders of the authorities below levying penalty under Section 271(1)(c) of the Act. Accordingly, the orders of both the authorities below are set aside and the penalty of ₹3,000/- levied by the Assessing Officer is deleted.

11. In the result, all the appeals filed by the assessee are allowed.

Order pronounced on 9<sup>th</sup> November, 2017 at Chennai.

sd/-

(संजय अरोड़ा)

(Sanjay Arora)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 9<sup>th</sup> November, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.